Compilation of Comments from BRRAG Members on the Rough Draft Revisions of Certain Sections & Ecology Responses Where Appropriate

GENERAL COMMENTS

Shelly Eisenbarth Comments

I did not have to much heartburn over these items below. I do want to make a couple comments regarding other topics in the rule.

Roberta King Comments

My comments at this point are that the changes, additions look reasonable.

Dick Hetherington Comments

We hope the final rule changes will move the State of Washington towards delegation of the federal biosolids program. We have already made those changes clear in prior comments.

Meanwhile, EPA plans to offer the State opportunities to become involved in implementation of our biosolids program. A copy of that plan was sent to you previously.

Kathleen Deason Comments

Comments received thus far from the group [the Douglas County Watershed Planning Association] include:

- There is a deep concern about extraneous materials in septage especially from chemical toilets (examples: needles or cigarette buds).
- Implement air quality monitoring in addition to water quality monitoring.
- There is a need for outside third party monitoring for biosolids applications.
- There is a concern about chemicals, pharmaceuticals, and other problem substances in biosolids.
- Consider a way to capture revenue from tax-exempt vehicles that are hauling biosolids.

SECTION 100, TRANSPORTATION

Kyle Dorsey Comments

Tenelco supports this revision to the rules. We note, however, that there is nothing here which stipulates the plan must be approved. Must the hauler or permit holder have an "approved" plan, or just submit one that meets the requirements (and in whose opinion then?)? What would constitute approval (permit coverage, an e-mail, verbal?).

Ecology Response

Similar to most other plans submitted as part of a permit application package, written or even communicated approval is not absolutely required prior to implementation of the plan. The plan must be submitted, and it must be in compliance with the rule and permit. If so, the permittee may conduct transportation under the plan unless and until Ecology objects to the plan; absent an objection, the plan is considered to be “provisionally approved”. Final approval of the plan is part of the issuance of final coverage under the permit.

SECTION 130, IMPORTING BIOSOLIDS (previously no section number)

Kyle Dorsey Comments

Tenelco believes the agency should use the term "sustainable objection," rather than simply "objection," so that objections without merit or which are ultimately resolved do not become unnecessary barriers.

Ecology Response

Changed “objection” to “sustainable objection”.

Rationale

In general, Ecology believe that if an out-of-state facility wants to bring solids into the state, it is incumbent upon that facility to ensure that any reasonable local or federal opposition is properly addressed. However, since Ecology will ultimately make a decision on the reasonableness of an objection, the commenter’s suggestion makes sense.

SECTION 192, RESEARCH EXEMPTION (previously no section number)

Kyle Dorsey Comments

Tenelco supports this new language with three caveats. We don't believe a research exemption should become a loophole permitting exemption for small facilities. The agency then should be diligent in ascertaining the true "research" value of any such proposal. Secondly, the elimination of public notice may create problems unless proponents are particularly vigilant about potential conflicts. Finally, the agency has no standard here for who submits a research proposal. While there certainly are persons not affiliated with universities who would be capable of developing a legitimate research proposal, Tenelco is inclined to think that such proposal should be somehow linked with institutions of higher learning. Note also our comment below about total land area.

Comments on a 5-acre limit

Is this interpreted per source, per site, per researcher, or per specific research effort?

Ecology Response

The 5-acre limitation has been increased to 10 acres. See comments below.

The language in the draft regarding the area limitation has been changed to, “The land area per contiguous site to which biosolids are applied is 10 acres or less” in an attempt to make the area limitation more clear.

Rationale

The size limitation is intended to be “per contiguous site” with the understanding that a legitimate research project could include sites across the state.

The overall intention of this section is to create a more simplified approval route for legitimate, useful research. Ecology suspects that most research will be conducted by a university-affiliated researcher. However, as the commenter suggests, there are many researchers who can conduct research who are not affiliated with a university. Thus, the language does not stipulate a university linkage. While the exemptions could result in some facilities seeking a “loophole” from the permitting requirements, Ecology believes that the requirement for an approved

research plan that includes —among other things—provisions for peer review will minimize the number of questionable proposals.

Roberta King Comments

5 acres isn't big enough for some research plots – like wheat and poplars – where we've done 10-15 acres.

As I noted earlier, I think the acreage allowed for a research exemption should be larger – up to 15 acres – to allow for plot replication, edge effect, operational constraints (i.e. be able to use regular size application or harvest equipment), site variability, etc. as needed.

Ecology Response

The acre limitation has been increased from 5 acres to 10 acres.

Rationale

Ecology agrees that 5 acres may be too limiting in some circumstances. Ten acres per site is deemed to be sufficient to support most research projects. If larger acreage is needed for research, interested facilities will need to permit the sites or utilize existing permitted sites.

SECTION 193, COMPOSTING TOILETS EXEMPTION (previously no section number)

Kyle Dorsey Comments

Tenelco support this new language, but we note the provisional "may" below. If the agency changes this to "are considered" it appears the desired intent of the new language will be retained while the uncertainty introduced by the use of the word "may" will be resolved. We confess, however, that we have not dwelt overly long in our consideration here.

Ecology Response

Changed the phrase, "may be considered" to "are considered".

Rationale

The draft definition of a "septage management facility" (SMF) is one that land applies septage or one that treats septage for land application. Thus, the language in the 1st draft of this section was inaccurate.

SECTION 205, SIGNIFICANT REMOVAL OR REDUCTION IN RECOGNIZABLES REQUIREMENT (previously no section number)

Kyle Dorsey Comments

We strongly disagree with the agency approach to the removal or reduction of recognizables in both septage and biosolids and likewise we oppose the shifting of the burden regarding VAR and storage. You can expect continued strong opposition from Tenelco (and others potentially) as the prior is short sighted at best, and the latter we find extremely concerning as we see no evidence that the agency reasonably grasps the implications of the proposed rule change.

Tenelco concurs the concept of cleaning up biosolids should be extended from septage to biosolids in general, but we object strongly to the proposed approach on multiple fronts.

First, the reference above to an "other method" was originally inserted thinking that (1) there might actually be some other way, and (2) the only recognized other way at the time was by physically picking up a site after land application occurred. Tenelco is unaware of any other

mechanical means other than some sort of screening or grinding that might be employed; manually picking up a site after land application is - at least at this point - an absurd notion and an impossible proposition to implement with even the most remote expectation of success. *Can't be done*. Tenelco recommends this language be removed.

Secondly, grinding only reduces in size things that should not be placed in the environment to begin with. Grinders require maintenance and as they wear, performance lags. Consequently performance will likely be lacking at some point before the deficiency is corrected with the result that trash will find its way into the final biosolids product. At any rate, the use of grinding as the sole means of correcting the problem of trash in biosolids reflects at this point a significant hypocrisy Ecology should rise above. There is no way the agency would permit "littering" or land application of the same waste in other circumstances if such thing were proposed separately, particularly when another better means of addressing the problem *is readily available*.

Additionally, the agency has added an "unless otherwise approved" clause to the requirement (here and in proposed revisions to Section 270). We are simply boggled when we try to envision a scenario where he agency would say, "Oh, heck, there's no need for you to remove all that trash; no worries, forget about it." If the agency is considering a question of timing for implementation of the requirement, then by all means allow a year or two for the rule to take effect, but we cannot envision a scenario where the agency should otherwise approve.

Our bottom line here, however, is that Tenelco believes the only responsible and acceptable approach to this question ***is to require screening***; allowances for grinding, other methods, and clauses allowing (apparently) agency discretion to not require any removal of trash at all are third world solutions the agency should eschew. There is simply no reasoned argument in this day of improving environmental stewardship and sustainable environmental practices– and especially given the status of Washington's biosolids management program – that can possibly justify returning the trash in biosolids to the environment either because it has been ground into unrecognizable pieces or on the absolutely silly promise of picking it up later. Various styles of screens are available from different vendors. In addition, simple bar screens cleaned manually can be effective in small volume situations and can be designed and built to suit. Tenelco would support a phased-in requirement for screening: Screen or bar size should be a ***maximum*** 5/8" aperture. Screening could be accomplished at any point in the process, either at the headworks, or by a contractor before land application takes place. Some material will get through the screen, but screening to a 5/8" maximum will result in a significant removal of trash. Even at that size of screen, grinding may continue to be desirable. Finally, the agency should consider an even more stringent standard (e.g. 3/8" for EQ products).

Ecology Response

Changed the term "*recognizables*" to "*manufactured inert waste*".

Deleted the phrase "*or reduce*".

Changed the language to require screening or another method to remove 95% of manufactured inert waste. Grinding is only allowed after the removal in order to render the remaining 5% as unrecognizable.

Eliminated the option for the department to provide an exemption from the requirements.

Added language that makes it clear that the required removal can occur at any time before end use.

Added language that allows a permittee up to 2 years after the effective date of the rule to implement a system that significantly removes manufactured inert waste prior to use.

Added language that allows grinding or another means to reduce recognizables for up to 2 years for existing facilities that did not have an effective method to remove manufactured inert waste prior to the rule requirement.

Inserted this as a new section in the rule and included septage in the language. Thus, language regarding recognizables has been deleted from the septage section of the rule (Section 270).

Rationale

Ecology agrees with the commenter that picking-up recognizables after application is an insufficient means to control recognizables. That is why the draft language specifically used the language "*significantly remove or reduce recognizables **prior to** application*". Thus, the option to pick-up after application was already being proposed to be eliminated.

Ecology originally sought to allow screening, grinding, or another method prior to application to allow the permittee to chose the option that worked best for their circumstances rather than imposing any particular method. However, Ecology agrees with the commenter that grinding merely reduces the size of materials so that they are unrecognizable, which simply results in the application of small-sized manufactured inert waste to the land rather than large-sized manufactured inert waste. Thus, the revised language seeks to disallow the use of a grinder as the primary means to remove recognizables. Still, though, Ecology seeks to allow the permittee to choose the method that works best for them without eliminating the use of options other than screening that might be available or become available in the future. (NOTE: A method to remove recognizables other than a screen or a grinder that Ecology is aware of is one used by some composters where lighter materials are essentially vacuumed out of the compost.)

Thus, in order to eliminate grinding as the primary means for removing recognizables while still maintaining the allowance for the use of methods other than screening, the term "*recognizables*" was changed to "*manufactured inert waste*". (The latter term is used in the state solid waste rule.) In addition, the phrase "or reduce" was also deleted from the section. The intention of the changes was to obviate the argument that grinding should be allowed as "another method" because it significantly reduces recognizables (it does). By replacing "recognizables" with "*manufactured inert waste*" and deleting "*or reduce*" the requirement now says that "*manufactured inert waste must be significantly removed prior to application…*" Grinding can reduce recognizables, and it can be argued that grinding could "reduce" manufactured inert waste, but grinding cannot remove manufactured inert waste.

With respect to allowing exemptions to the requirement, the single situation that Ecology considered where an exemption might be appropriate was one where biosolids were used as intermediate cover at a landfill (an allowed beneficial use). In such circumstances, the permittee could argue that there is no need to remove manufactured inert waste from the material because more manufactured inert waste will be placed atop the cover material within a fairly short timeframe (1-5 years). However, in light of the comments and upon further reflection, Ecology has concluded that providing an exemption in such a situation is unwarranted primarily for the following reason: Failure to remove manufactured inert waste eliminates the possibility for use of the material in any other application. Thus the permittee would be strictly limited to use of their biosolids as intermediate cover at a landfill. If this management alternative were to become unavailable, the permittee would find itself in a situation where they would need to dispose of their biosolids. Placing oneself into such a situation is contrary to the statutory requirement of maximizing beneficial use.

Ecology recognizes that not all facilities are set-up to screen or use another method other than grinding to reduce manufactured inert waste, thus the revised language allows up to 2 years for implementation of a process.

In addition, Ecology recognizes that some existing systems have significant solids that have accumulated prior to installation of a screen (e.g. older lagoons) and others have inadequate screening. In order to allow for beneficial use in such circumstances Ecology believes it is prudent to allow grinding as a means to reduce recognizables during the time when the proper screening options can be installed.

SECTION 140, CLASS A-ALTERNATIVES 3 & 4 (previously Section 170[2][c]&[d])

Kyle Dorsey Comments

Tenelco supports this revision, but we recommend placing it in Section 140. First, Section 140 requires representative samples, which is the appropriate context for requiring sampling plans. Secondly, the requirement for a sampling plan really should not be limited to these particular instances of the rule. Also, we think the requirement for written approval would be better placed in the appropriate section(s) of a relevant general permit.

Ecology Response

Moved the requirement without change to Section 140.

Rationale

The reason for placing the language in Section 170 was to provide notice to facilities that using these alternatives would require written, pre-approval of a sampling plan. However, Section 140 is a more appropriate location for the language.

Submittal of a sampling plan is not limited to these circumstances, but written approval of the sampling plan prior to conducting sampling is limited to these circumstances. In some cases final permit coverage requires submittal of a sampling plan. In other cases the regulatory authority may require submittal of a sampling plan prior to issuance of final coverage. In many cases sampling is conducted in accordance with a sampling plan that may or may not have been submitted to Ecology. Such plans are "provisionally approved" without a requirement for written approval as long as they meet the rule requirement of "representative sampling".

In the situation of Class A-Alternatives 3 & 4, Ecology believes that given concerns about the analytical methods used and the potential for the biosolids to be distributed to the public, greater scrutiny is appropriate in order to be protective of human health. Thus, the strict requirement that a plan be submitted and granted approval in-writing was added. (NOTE: This issue was discussed in detail during BRRAG Meeting #1.)

The current general permit does not have this provision. Rather than wait until a new general permit is issued, Ecology believes it is appropriate to add a new requirement in the rule for submittal of a sampling plan and written approval of that plan. A future general permit will also have this requirement.

SECTION 260, BIOSOLIDS SOLD OR GIVEN AWAY IN A BAG OR OTHER CONTAINER

Kyle Dorsey Comments

Tenelco supports this revision.

Roberta King Comments

Comments on label requirements

I know it's been like this in the 308, but I've always had a concern with this section – and the extras required by Washington State. EPA's intent was to encourage production of EQ biosolids, and the carrot was that it could be competitive with other products, by not having extra requirements. It seems that for biosolids to be competitive, each state should be as consistent as possible.

Ecology Response

Deleted (2)(a)(vii).

Rationale

Please see responses to specific questions and comments below. It should be noted that the federal biosolids rule (503) does not require that biosolids sold or given away in a bag or other container meet the EQ standards. The proposed revision to the state rule is to make this a requirement.

In general, Ecology views the 503 requirements for labeling to be inadequate to provide information to the end user on the proper use and handling of the biosolids. In addition, the state program seeks to encourage all end users toward the proper use of the biosolids products used across the state. It is due to Ecology's view of inadequate 503 requirements and the desire to encourage proper end use by all users that led to the additional requirements in the state rule relative to the federal rule. Also, during the economic impact analysis conducted for the original biosolids rule, this particular issue was explored. The determination at the time was that the cost to permittees to provide additional information on the labels required in the state rule relative to the federal rule was more than offset by the benefit of providing end users with adequate information to use the material in a manner that is protective of human health and the environment.

(i) Name and address of preparer should be adequate – why is phone number required by WA?

Ecology Response

A phone number is necessary in order to provide the end user with a means to quickly contact the preparer if questions arise regarding compliance and proper usage.

(ii) what is purpose of this requirement? Seems like an optional PR or marketing statement, something for guidelines, not the rule.

Ecology Response

Ecology is not certain at this time why this provision was included. Ecology will consult with previous rule development documents to ascertain the rationale for including this.

(iii) encourages proper use and protection of the environment. This one is stated more like a suggestion than the requirement in EPA 503.14 (e)(2) Which may be OK, but seems out of 'character' with all the other WA requirements.

The overall goal of the label is to provide the end user with enough information so that they may use the product properly to ensure protection of human health and the environment. The 503.14(e)(2) requirement does not meet this standard.

(ii) and (iii) seem to expand/complicate EPA's simple statement

(iv) Not required by EPA. Seems contradictory with (vi). Only an estimate of how to use can be given if only estimate/average can be made.

Ecology Response

This information is required to ensure that the end user has sufficient information to apply the material at a rate that is reasonably close to the true agronomic rate. Application at an agronomic rate is a requirement even for EQ biosolids in accordance with Section 190. Agronomic rate are estimates even if one knows the exact nutrient content due to the dynamic nature of biosolids and the soils to which they are applied and the degree of research on nitrogen requirements for most vegetation.

(v) Not required by EPA. Why is this required in WA? I can't remember the history behind this requirement, was it because of waste-derived fertilizers?

Ecology Response

This is required to maintain an open state biosolids program that does not try to hide the fact that a product is derived from biosolids. The success of the state program is contingent on an honest exchange of information between the producers and the public who use the products.

(vi) any chance fertilizer rules would change and this would not be necessary?

Ecology Response

Ecology plans to meet with the Washington State Department of Agriculture to discuss this and other issues sometime after the rule revision process is completed. The likelihood of WSDA changing its fertilizer rule as a result is unknown, but Ecology will at least try to garner some agreement on the requirements for labels. If the efforts are successful, then this provision would be unnecessary.

vii) how is this different from (iii)?

Ecology Response

It isn't really different. Ecology believes this was included in the original rule to provide yet another outlet for the producer to encourage safe use of the product. However, because this is already required in (iii), it has been deleted from the draft revision to this section.

(b) is this needed? Is it a reciprocal deal among states? If they meet WA standards, don't they automatically meet EPA standards? Or would it be necessary because AWSAR that is now being deleted in WA law?

Ecology Response

The intention of this provision was to provide notice to permittees that they are not subject to the state rule's labeling requirements when selling or giving away biosolids in a bag or other container outside of the jurisdiction of the state. The state rule controls biosolids sold or given away within the state. Beyond WA state jurisdiction, biosolids sold or given away must abide by the federal requirements and any state and local requirements.

SECTION 270, SEPTAGE MANAGEMENT ISSUES (includes changes to Sections 080 & 310[1]))

Kyle Dorsey Comments

Tenelco has strong reactions to some of the draft work. In general, I think the section on septage management issues should have a summary similar to what you did for public notice. There

appears to be at least one significant change that I do not recall discussing or seeing previously, but generally the revisions and restructuring make the effect of the changes difficult to follow or discern.

Ecology is clearly specifically concerned with making changes to elements of the rule which pertain to septage management. Tenelco has no objection to necessary rule or program improvements. We do think, however, that the effects of restructuring and mark-text make it difficult to understand clearly what the impact of the proposed changes in language will be, especially given the interpretations commonly employed for some terms and potentially parallel changes in the applicable definitions. Tenelco believes the agency should prepare an analysis chart of current management options and requirements, and should identify how those would change under the proposed rule. This is similar to the discussion format employed by US EPA in its preambles to proposed rule changes.

Ecology Response

Ecology prepared a simple table addressing the impact of the proposed revisions and placed it in the revised draft for this section that was sent to the BRRAG on 10/19/2006.

Comments on the deletion of certain language from the definition of treatment works treating domestic sewage

", but may include persons or vehicles that service septic systems and centralized septage facilities that are designated as a treatment works treating domestic sewage or are applicable under this definition"

Tenelco simply recommends here that the agency be cognizant of the original reasons for placement of the (proposed deleted) language in the rule. The intent, as we recall, was to facilitate designation of entities as TWTDS to compel them to come under the permit program if necessary to protect public health and the environment. In this case the language specifically provided for designation of septic tank pumpers (persons or vehicles). The department should be certain it is not conceding a necessary compliance tool.

Ecology Response

Under the proposed revisions, a centralized septage facility is automatically a TWTDS. The option to declare any person, site, or facility (including septic tank pumpers) where applicable biosolids management activities take place as a TWTDS remains in the rule. It can be found in the 11/07/2006 draft under Section 310(1)(b).

Comments on the revised definition of the 3 classes of domestic septage

Without addressing the merit of arranging septage sources under three classes, Tenelco wishes to once again observe that the percentage limits are just unenforceable, and they have no specific technical basis. The original rule writer was simply trying to accommodate established industry behavior (perhaps in contradiction to the federal program). While it is at least possible to measure the percentage of grease trap waste in a container of some kind, there is no reasonable way for a facility receiving septage to fairly ascertain whether a truckload contains a particular percentage of Class II septage, and it will be difficult for pumpers themselves to be certain since vaults holding Class II material are of varying sizes. Further, there is absolutely no way on inspection of a site for Ecology to ascertain compliance other than by inspection of written records which may prove a difficult or impossible task to implement and beyond tedious to carry out.

Tenelco wishes to note that the current rule already includes enhanced management requirements for Class II materials. We are uncertain then of the net effect of this rule change. We ask that

Ecology take time to develop a comparative chart analyzing management options and requirements for the three classes of septage under the existing rule and the proposed rule.

Ecology Response

With respect to enforcing the percentage standards, Ecology recognizes the commenter's suggestion that this will be extremely difficult. However, it is not impossible, and having a stated standard at least allows the agency an opportunity to ensure that the material is meeting an established standard for septage. It should be noted that there are similar difficulties in enforcing many of the other standards in the rule.

With respect to the technical merit of the standards, the percentages are not technically-based. Rather, they are primarily a recognition of the practicalities of the industry. The idea of the percentages and various classes is to recognize that less stabilized septage and GTW are often mixed with stabilized septage from a septage tank but to also require that the vast majority of the mixture be composed of stabilized septage from a septic tank. The reason for this is that the federal requirements for septage management were based primarily on data from stabilized septage (admittedly these data are very limited).

With respect to the managed requirements for Class II septage, the current rule allows such material to be directly land-applied if pH-adjusted for only 30 minutes. Recognizing that Class II septage is primarily raw sewage rather than the more stabilized septage for which the 30-minutes pH adjustment standard was designed, the proposed revisions would impose a higher standard that requires meeting at least the Class B for pathogens requirements and that includes testing for pollutants.

As stated above, in the revised draft of the septage section sent to the BRRAG on 11/19/2006, Ecology prepared a table that seeks to simply present the proposed revisions for septage relative to the requirements under the current rule.

Comments on the requirement to remove or reduce recognizables

Unless otherwise approved? What ***possible*** reason or other method could the regulatory authority envision here? Tenelco simply cannot comprehend the agency's disinclination to remove manufactured inert waste from septage (and biosolids) before they are applied to the land. There simply is no reasonable justification for not requiring screening at all land application sites. If you cannot provide screening and handle the resulting solid waste appropriately then you need to take your septage to a facility that can.

Ecology Response

See comments on amendments to this requirement provided in the discussion of Section 205, above.

Comments on the requirements that all septage managed as such adhere to the same site management and access restriction requirements—regardless of whether or not it was pH-adjusted.

Between (4) and (5) Tenelco believes the agency has effected a significant departure from the existing rules which we do not recall previously discussing or evaluating. Previously, certain site management and access restrictions were not required for Class I and III materials if alkaline stabilization was performed. Now all site management and access restrictions are applied regardless. Again, the agency needs to provide an analysis of the affects of all propose changes to rules pertaining to septage management. At present they are difficult to sort out.

Comments on the site posting requirement that specifies the distance between signs around the perimeter of a site

804***.672*** meters??? We suspect 800 meters will work as a practical matter if it is necessary to champion the metric system.

Ecology Response

Changed 804.672 meters to 805 meters. This change will be implemented elsewhere in the rule as well.

Rationale

The overarching purpose of the proposed revision was to clarify the requirement of where signs must be posted. The current rule says "*…otherwise around the perimeter so that they can be noticed and read by a reasonably observant person*." The proposed revision specifies that this phrase means every ½ mile. As done elsewhere throughout the rule, the revised language leads with the metric unit then places the standard unit in parentheses. It is unnecessary to drag the significant figures out beyond a whole number for the metric units in this instance.

SECTION 280, STORAGE (includes changes to Section 080)

Kyle Dorsey Comments

Comments on a new requirement that biosolids stored in the field meet one of the vector attraction reduction requirements prior to storage but allows the department to provide exemptions

Tenelco ***strongly disagrees*** with this requirement. Winter storage is essential to the continued operation of our business. If implemented and the department does not approve winter storage (at any point), this new rule will shut Tenelco down as a viable business. Winter storage is also important to other operations in the state. This rule may make it impossible for some treatment works to winter-store their biosolids. Has the agency documented widespread complaints that justify this change? If so, how many odor complaints from stored biosolids *not* meeting VAR has the agency documented versus biosolids which have met VAR requirements? ***Ecology already has completely adequate authority*** under the current rules to require additional or more stringent measures through its permitting system if and where they are required. In the current situation then the burden of reasonable proof is on the agency to justify the additional permit requirement. ***This rule change shifts the burden on to the generator or land applier to obtain a permission for which there is no objective measurable standard***. Ecology must think forward to scenarios where this type of judgment call will have to be made. Tenelco feels a rule which places the burden on the regulated community subject to the entirely subjective judgment of staff– including delegated jurisdictional health department staff - who may have greatly varying degrees of expertise and opinions and face political pressure from varying sources is an unreasonable proposition.

Ecology Response

Amended the language to require submittal of a plan that addresses how a facility will ensure adequate protection of human health from stored biosolids not meeting a VAR requirement.

Rationale

Ecology recognizes the concerns expressed by the commenter. It is important to remember that the intention of VAR is to reduce the "attractiveness" of the biosolids to potential vectors so that the transfer of potential pathogens via a vector is minimized. Storage in the field can occur for

extensive lengths of time, depending on permit limits and the particular circumstances at the storage site. Lengthy storage of inadequately stabilized biosolids increases the risk of transfer of potential pathogens.

Ecology does not agree with the commenter that shifting the burden from the regulator to the regulated community is necessarily unreasonable. However, in this case Ecology believes that adequate protection of human health can be achieved by submittal of a plan without eliminating the field storage option altogether. This is similar to the requirement in the rule that requires a plan that addresses protection of groundwater at sites where the seasonally high groundwater is less than 3 feet below the surface. It that case, a plan can simply say that applications will not occur when the groundwater is less than 3 feet below the surface. Ecology envisions plans addressing storage of non-VAR material to be simple as well. For example, a plan could simply say that storage only occurs during winter when microbial activity in the biosolids is at a minimum and the presence of potential vectors is also at a minimum. Or a plan might say that the stored material will be covered to prevent access by potential vectors. Or a plan might simply say that the nearest point of contact with the public is >1 miles from the storage site, and therefore the risk to human health is minimal any time of year.

SECTION 295, ANNUAL REPORTS

Kyle Dorsey Comments

Tenelco generally supports this revision but has a couple of reservations. The original language was composed from federal prose with the intent of demonstrating adherence to federal requirements pertaining to delegation. The contents of reports will now hinge on the contents of *forms* which are not part of a rule or public process (though they perhaps should be). Consequently forms may be changed or adapted in ways that do not support federal program compliance, or even if not, EPA may not support the removal of specific reporting requirements from the actual regulation.

The apparent intent here is to simply do by rule what the agency has done by permit – require annual reports from all facilities (original rule language only *required* reports from large facilities). This makes sense, but the existing rule language specifies the contents of the annual reports. In the case of the revised language Ecology has removed that specification and essentially created a carte blanche for information gathering. For example, the agency could add a requirement to include data on the concentrations of pollutants not already monitored by facilities. While we do trust Ecology staff, we also note that the original thinking and the true the purpose and intent of regulations is often lost with time and politics.

Ecology Response

Changed the phrase “All applicable information requested” to “All requested information that is required under this chapter or an applicable permit”.

Rationale

Ecology’s intention of the rule revision is to clearly require an annual report from all permittees and to gather adequate information from the annual reports to ensure compliance with the rule and permits. Ecology has no intention of using the annual reports to collect information that is not otherwise required. The original phrasing was considered to express those intentions, however, for the purposes of providing clarity in response to the comments, the language has been amended.

SECTION 310(4) & (5), TIMING OF APPLICATIONS AND NOIs--DRAFT REVISED LANGUAGE (previously Section 310[4])

Kyle Dorsey Comments

Comments on language requiring an application within 90 days after a new permit is issued but allowing the permitting authority to grant an extension up to 180 days.

Tenelco has no specific objection here, but notes that the case-by-case decision making is likely to vary with the judgment of the primary regulatory contact. This creates potential for inconsistent approaches that could generate pressure gradients of dissent in the regulated community. One of the long time hallmarks of the biosolids program has been the efforts of Ecology staff to develop consistent approaches to problems and policy questions statewide. At the least we think the agency should develop some working policy or a commitment to review requests based on consistent criteria.

Ecology Response

No change.

Rationale

Ecology's Solid Waste and Financial Assistance Program works diligently to provide a consistent approach to regulatory decisions made across the state. The Biosolids Program staff are particularly focused on developing collaborative approaches to decisions. Ecology may not develop a written policy to guide how determinations on requests for extensions are made, but internal communication will ensure that there is a generally accepted approach implemented across the state. Ecology does not want to remove the option for facility- and region-specific issues to be considered when considering a request for an extension.

Comments on language requiring timing for submittal of a Notice of Intent (NOI) by new facilities

Tenelco believes this may not properly capture the purposes of the Notice of Intent provision which originates in federal rules. As we recall, the first order of business for a typical general permit (per federal model) is for the agency to solicit a notice of intent from interested facilities. This gives an indication of the benefit of issuing the permit. Federal rules do (as we recall, but verify) allow a more expeditious approach where the permitting authority can simply identify covered facilities – POOF! - , telling them they are now covered (in which case they might appeal). There is, however, no way for a facility to really submit a notice of intent 180 days in advance of engaging in applicable biosolids management activities because the proposition depends first upon the agency deciding to do something when a facility may already be engaged in the subject activities.

In short, Tenelco sees an administrative glitch here, and recommends you consult an expert in such things (Dick Hetherington).

Ecology Response

Deleted the language requiring an NOI and an application 180 days before engaging in applicable biosolids management activities. Instead, the language requires just a submittal of an application.

Rationale

Ecology has communicated with EPA Region 10 on this issue. Generally EPA uses the NOI differently than Ecology. Under the state program and the draft revisions to the rule, the purpose

of the NOI is to allow a facility to notify Ecology that they will be applying for coverage under an applicable general permit within the timeline allowed by the rule after the general permit is issued.

It should be noted that the language to which the commenter refers to is for new facilities. The assumption on this was that new facilities in the planning or construction process would have far, far longer than 180 days available to them to submit a NOI and permit application prior to engaging in biosolids management activities. Existing facilities engaging in biosolids management activities are out of compliance with the state rule and general permit if they have not submitted either a NOI or a permit application. In either case, an alternative approach is to not require the NOI and instead only require the application. That has been the approach taken by Ecology when existing facilities subject to the rule have been discovered, and the language has been revised to require this for new facilities as well.

The proposed revisions to the NOI and application process and timelines seek to simplify and clarify the process. It is recognized that the language in the 11/07/2006 revised draft sent to the BRRAG will likely still need considerable improvements.

Comments on timing for submittal of an application for an individual permit and timing for submittal of an application for coverage under a general permit if the individual permit was denied

Regarding e and f above. The previous rule writer originally envisioned two scenarios. One was the circumstance where someone had a hitherto unknown "beneficial use" concept simply not captured by the existing permit. In the other case the anticipated circumstance was a difficult compliance situation where individual permit coverage was warranted as a means of compelling focus on compliance obligations. In the first case there may be no reason to stipulate a *maximum* time frame of 180 days for the submittal, but the department felt originally that a *minimum* time frame was important to give the permit applicant an opportunity to prepare. It was further anticipated that where an individual permit was denied, that most of the leg work would have been done already, and the submittal period was therefore shortened to 60 days as a means of expediting the process. Again, we see no specific reason why the department would limit itself to allowing up to 90 days.

Ecology Response

No change.

Rationale

The intention of (e) was to provide consistency regarding the timing for applications from facilities applying for coverage under a general permit—specifically, 90 days after issuance of a general permit with a possible extension up to 180 days. Ecology believes that 90 will be more than adequate in most cases, but in cases where 90 days are inadequate, an extension can be provided.

The intent of (f) was to encourage quick submittal of an application for coverage under a general permit following denial of an application for an individual permit but, again, to allow for some regulatory discretion to extend the application permit if warranted.

Ecology's overall intention of draft revisions to the timing of applications is to expedite the application process for most facilities.

SECTION 310(14), PUBLIC NOTICE (previously Section 310[11])

Kyle Dorsey Comments

Unfortunately we have run out of time to review the draft language and this one is the most complex of the proposed draft revisions. We have one observation regarding "Insignificant change in biosolids management practices." Tenelco thinks the agency might want to eliminate this, and we offer the following rationale while acknowledging once again that we have not studied the new language thoroughly.

The intent of defining a "significant" change in biosolids management practices was to say when a facility covered by an exciting permit would be stepping beyond the bounds of its original proposal. For example, going from a silvicultural site to potatoes would be significant, while changing from soft white wheat to hard read inter wheat would not. At the time this language was created, the agency simply recognized that biosolids, being a commodity, are somewhat about innovation and marketing and things change. There was also less certainty about how the agency would operate and the public would react and this somewhat curious definition seemed a prudent step. It was intended to validate some flexibility while still keeping fundamental expectations in order. With this in mind, Tenelco believes that if the agency defines what are significant changes, then the rule could be written so that only those things necessitate actions, and the rest being "insignificant" require no further contemplation and require no specific recognition or accommodation in the rules.

As a final note, we think the language regarding an increase or reduction in established approval or permit limits (depending on which definition you look at) is subject to interpretation and likely to be confusing to readers.

Ecology Response

The definition of “insignificant change” has been deleted.

Rationale

Ecology agrees that is seems unnecessary to define “insignificant change” when it could simply refer to changes that do not meet the definition of significant change. However, during BRRAG Meeting #2 suggestions were made that providing such a definition would help in clarifying what is and what is not an insignificant change. In addition, draft language in this section also seeks to provide a clear exemption from the public notice provisions for facilities proposing insignificant changes. Thus, Ecology devised a flexible definition for insignificant change. Despite this, Ecology agrees with the commenter that there does not appear to be a compelling need for such a definition.

Ecology has maintained the language in the revised definition of “significant change” because it is believed to provide some additional clarity as to the meaning of the term. The definition allows for regulatory flexibility by listing examples of significant changes but not limiting the definition to those examples.

SECTION 310(22), TERMINATION OF PERMITS

Kyle Dorsey Comments

Tenelco supports this revised language.